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09/335,648	06/18/1999	KEVIN L. KIMLE	P03566USO	6709

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EXAMINER

KYLE, CHARLES R

ART UNIT	PAPER NUMBER
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3624

DATE MAILED: 02/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/335,648

Applicant(s)

KIMLE ET AL.

Examiner

Charles R Kyle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 21-22** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

**As to Claim 21**, it recites allocation of stored data among elevators. This makes no sense as written.

**As to Claim 22**, it recites allocation of stored data into distinct geographic regions.. This makes no sense as written.

### ***Claim Rejections - 35 USC § 103***

For clarity, the rejections set forth in the prior office action are restated below.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-28** are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al.

**Concerning Claim 1**, Walker et al disclose the invention substantially as claimed including a method for contracting of commodities on the Internet (Abstract); which provides a

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centralized database for storage and retrieval of data (Fig. 2, elements 255, 269, 265, 267 and Col. 12, line 35 to Col. 13, line 62); storage in the database data relating to buyers' desires for commodities (Col. 13, lines 1-10 and 23-29); in response to a command input, displaying a list of desired commodities and related information regarding types, amounts or deliveries of the desired commodities (Figure 9 and Col. 18, line 56 to Col. 19, line 12; receiving input data relating to a specific type and amount of commodity which the supplier is willing to supply (Col. 13, lines 11-22 and 30-34) and generating a contract for the sale of the specific type and amount of the commodity by the supplier to the buyer (Fig. 2, element 280 and Col. 13, lines 44-48).

Walker does not disclose storage, display or receipt of input data specifically relating to types, deliveries and amounts of desired or offered agricultural commodities.

However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The recited providing, storing, displaying, data receipt and generating steps would be performed the same regardless of the data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to perform the recited method steps for any type of data, because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the invention.

**As to Claim 2**, Walker et al disclose information input by a browser at Col. 15, line 66 to Col. 16, line 2.

**Regarding Claims 4-9**, they also recite performing the recited method steps on more detailed forms of agricultural products. As with Claim 1, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability.

**Concerning Claim 10**, see the discussions above. Walker discloses updating the listing of commodities at Col. 18, lines 44-55. This suggests updating based on contracting; it would have been obvious to have updated the listing based on a change in data as a result of contracting because this would have helped provide users with an up-to-date understanding of the market.

**Regarding Claim 11**, Walker et al disclose a paper contract at Col. 6, lines 35-44.

**As to Claim 12**, Walker et al disclose an electronic contract using a digital signature at Col. 6, lines 45-65.

**Regarding Claim 13**, see the discussion of Claim 1 above. As to the element recited in Claim 13 of updating data, see the discussion of Claim 10.

**As to Claim 14**, Walker discloses management of delivery terms and times at Col. 20, lines 30-48.

**Regarding Claim 15**, it also recites performing the recited method steps on more detailed forms of agricultural products. As with Claim 1, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability.

**Concerning Claim 16**, Walker discloses pricing of a contract based on a variable at Col. 10, lines 40-46.

**As to Claim 17**, Walker does not specifically disclose pricing based on delivery time or quality. Official Notice is taken that basing pricing a contract on quality is old and well known in the art. For example, contract pricing of electronic bandwidth is based on quality of service.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Walker to use quality as a factor in pricing because this would have assured buyers that they would receive value for money spent.

**Regarding Claim 18**, Walker et al teach accessing a centralized database installed on an Internet Web server at Col. 5, line 66 to Col. 16, line 22.

**As to Claim 20**, see the discussion of Claims 13 and 4 above.

**Concerning Claims 21-23**, see the discussions above. Walker further discloses allocation of data based on a variable at Fig. 2, elements contained in element 250.

Walker does not specifically allocation based on agricultural contract variables.

However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The recited allocating step would be performed the same regardless of the data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to perform the recited method steps for any type of data, because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the invention.

**As to Claim 25**, Walker et al disclose an apparatus for contracting for commodities over a wide area network comprising an application/web server and a database serve at Col. 11, lines 58-63 and Col. 14, lines 30-52; communications links for the above at Fig. 1, elements 100, 110, 120; one or more user terminals, Fig. 1, elements 300, 400; and software to store data in the

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database data relating to buyers' desires for commodities (Col. 13, lines 1-10 and 23-29); in response to a command input, displaying a list of desired commodities and related information regarding types, amounts or deliveries of the desired commodities (Figure 9 and Col. 18, line 56 to Col. 19, line 12; receiving input data relating to a specific type and amount of commodity which the supplier is willing to supply (Col. 13, lines 11-22 and 30-34) and generating a contract for the sale of the specific type and amount of the commodity by the supplier to the buyer (Fig. 2, element 280 and Col. 13, lines 44-48).

Walker does not disclose storage, display or receipt of input data specifically relating to types, deliveries and amounts of desired or offered agricultural commodities.

However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The recited providing, storing, displaying, data receipt and generating steps would be performed the same regardless of the data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to perform the recited method steps for any type of data, because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the invention.

**As to Claim 26**, Walker et al disclose a wide area distributed network (WAN) at Col. 11, lines 58-63; plural seller computers in operative communication with the WAN at Fig. 1, elements 300, Fig. 3 and Col. 14, lines 53 to Col. 15, line 22; plural buyer computers in operative

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communication with the WAN at Fig. 1, elements 400, Fig. 4 and Col. 15, lines 22 to 29; a database storing data relating to a specific type and amount of commodity which a supplier is willing to supply (Col. 13, lines 11-22 and 30-34); a database storing data relating to buyers' desires for commodities (Col. 13, lines 1-10 and 23-29); and generation of a contract for the sale of the specific type and amount of the commodity by the supplier to the buyer (Fig. 2, element 280 and Col. 13, lines 44-48).

Walker does not disclose storage, display or receipt of input data specifically relating to types, deliveries and amounts of desired or offered agricultural commodities.

However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The recited providing, storing, displaying, data receipt and generating steps would be performed the same regardless of the data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to perform the recited method steps for any type of data, because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the invention.

**Concerning Claim 27**, Walker et al disclose a software security component to restrict access to the system at Col. 12, lines 27-30 and Col. 15, lines 3-5.

**Regarding Claim 28**, Walker et al disclose varying levels of access to data by authorized users of the system at Col. 27, line 19 to Col. 30, line 29.



**Claims 3 and 19** are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al in view of the Microsoft Press Computer Dictionary, Third Edition, hereinafter referred to as Dictionary.

**As to Claims 3 and 19**, Walker et al discloses the invention substantially as claimed. See the discussions of Claims 1, 13 and 18 above. It does not specifically disclose the use of Java or other applets for input of and access to information to the system. Dictionary, however teaches the Java language and Java applets as useful for secure, robust, platform neutral programming of interactive applications for Internet Web browsers. See Java and Java applet topics, page 268 of Dictionary. It would have been obvious to one of ordinary skill in the art at the time of the invention to have used Java applets for data input and access as taught by Dictionary, in combination with Walker et al because this would have provided a for secure, robust, platform neutral method for users to input and access information to contract for commodities on the Internet.

### ***Response to Arguments***

Applicants argue extensively in an attempt to swear behind the Walker et al reference. However, Applicants do not account for the period from October 2, 1996 to December 3, 1996 for which period no evidence is provided of diligence. This period was specifically cited as at page 12 of the prior office action; it is not addressed in Applicants' response. The Walker reference is not removed.

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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles R Kyle whose telephone number is (703) 305-4458. The examiner can normally be reached on M-F 6:00-2:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (703) 308-1065. The fax phone number for the organization where this application or proceeding is assigned are (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Examiner Charles Kyle

A handwritten signature in cursive script, appearing to read "Charles Kyle", with a small mark at the end of the line.

crk  
February 7, 2004